67. Like Adams, the Bureau also incorrectly finds the negative answer to Question 7(d) to be "problematical." Unlike Adams, however, the Bureau correctly finds that the negative answer was based upon Parker's belief, in reliance upon Mr. Wadlow's legal advice, that all character issues against SBB in Religious Broadcasting *had* been resolved and that, therefore, the Bureau concludes that the answer was not intended to deceive. (Bureau's Brief, ¶ 131-133.) Adams, however, rejects Parker's reliance on counsel and attempts to discredit both Parker's and Mr. Wadlow's testimony with respect to resolution of the character issues in Religious Broadcasting. (Adams' Brief, ¶¶ 351-358, 374-377, 433, 442.) In particular, Adams argues that Mr. Wadlow's advice -- that the Commission would not approve a settlement to a disqualified applicant -- was so obviously wrong that it could not have been relied on in good faith. (Id., ¶¶ 363, 377, 443, 449.) In making that argument, Adams relies exclusively on Allegan County Broadcasters, Inc., 83 FCC 2d 371 (1980), for the proposition that "disqualified applicants may be paid for the dismissal of their applications." (Id., ¶ 442, see also id., ¶¶ 358, 377.)

68. Adams' interpretation of Allegan County is flatly incorrect and its reliance is, therefore, misplaced. Specifically, Allegan County does not state, as Adams asserts, that "disqualified applicants may be paid for the dismissal of their applications," but stands only for the premise that the Commission will not withhold approval of a settlement on the basis of an *unresolved* character issue. Allegan County Broadcasters, Inc., 83 FCC 2d 371, ¶¶ 2-7 ("Accordingly, beginning with this case, we will no longer require the resolution of character qualification

allegations pending against an applicant prior to that applicant's withdrawal, with reimbursement, from Commission proceedings.") In contrast, Commission policy *is* that the Commission *will not* approve a settlement to an applicant who *has been found* to be disqualified. See SL Communications, 168 F.3d at 1359.[19] Thus, Mr. Wadlow's advice (and Parker's understanding), that the Commission would not have approved the settlement in Religious Broadcasting if SBB had been found to be disqualified, is correct.[20] As a consequence, the only reasonable interpretation of

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[19] In fact, in the Commission's decision underlying SL Communications, the Commission expressly distinguished Allegan County on the basis that, in that case, the character issue had not been resolved while in SL Communications the applicant had been found to be unqualified. Specifically, the Commission stated:

> [The Petitioner] has been adjudged and found to be unqualified by an ALJ, whose decision has been reviewed and affirmed by the Review Board, as well as by the full Commission. Conversely, in Allegan, charges of disqualifying conduct had been made against the party seeking to withdraw from the proceeding, but at the time of the settlement, the charges had not been fully resolved by the Commission. Indeed, central to the Commission's decision in Allegan, was that Commission resources would not be needlessly wasted to conduct a hearing on charges of disqualifying conduct when the challenged applicant was willing to voluntarily withdraw and when another qualified applicant in the proceeding stood ready to construct the station. In these circumstances, we decline to extent the Allegan policy to the Petitioners' proposed settlement.

Dorothy O. Schulze and Deborah Brigham, a General Partnership, 13 FCC Rcd 3259 (1998), aff'd sub nom. SL Communications, Inc. v. FCC, 168 F.3d 1354, 1359 (D.C. Cir. 1999).

[20] See Wadlow Testimony, Tr. 1854:23-1855:16 --

> Mr. Shook: Well, wouldn't it be your understanding, though, that given the procedural history of the [Religious Broadcasting] case, that when the review board approved the settlement in October of 1990, that the real party in interest issue, in fact, was not resolved?

(footnote continues)

the Review Board's decision consistent with the approval of the settlement is that SBB was not found to be disqualified as a result of the real-party-in-interest issue and that the real-party-in-interest ruling went only to the comparative analysis of SBB's integration and diversification credit.

69. Adams' analysis also omits any mention of Doylan Forney, 3 FCC Rcd 6330 (Rev. Bd. 1988). There, just a few months after its Religious Broadcasting decision, the Review Board summarized its holding in Religious Broadcasting as follows: "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit." 3 FCC Rcd at 6338, n.1. Who knows better than the Review Board itself what it decided in Religious Broadcasting? How can Parker be branded as a liar for advancing the same interpretation of the Review Board's Religious Broadcasting decision that the Review Board itself stated in Doylan Forney?

70. As demonstrated above, the answer to Question 7(d) that Religious Broadcasting left no "unresolved character issues against [SBB]," is accurate. In

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> Mr. Wadlow: Well, I believe it was in the sense that a trial had been held on it, a hearing had been held on it, a judge had made findings and conclusions, a review board had acted on exceptions and then the review board has acted on the settlement.
>
> Q: And so your understanding . . . is that if the review board is going to approve a settlement in these circumstances, that it necessarily had to [resolve] the disqualifying issue in favor of the applicant before it could approve such a settlement?
>
> A. I believe -- maybe I'm confused, but I believe that to approve payment to an applicant, the applicant cannot have been found to be disqualified.

any case, even if one were to apply a highly technical, legalistic (but incorrect) analysis that the settlement prevented the real-party-in-interest issue from being fully "resolved," it is clear that both Parker and his counsel, Mr. Wadlow, believed in good faith that the issue had been favorably resolved with respect to Parker's character qualifications. As the Bureau concludes, such reliance on the legal advice of counsel belies an intent to deceive. (Bureau's Brief, ¶ 133.)

d. The disclosures.

71. The Religious Broadcasting and Mt. Baker disclosures to which Adams takes exception were made in response to positive answers to Questions 7(a, b & e) in the Applications. Specifically, the Applications asked:

> 7. Has the applicant or any party to this application had any interest in or connection with the following:
>
> | | | Yes | No |
> |---|---|---|---|
> | (a) | an application which has been dismissed with prejudice by the Commission? | X | |
> | (b) | an application which has been denied by the Commission? | X | |
>
> * * *
>
> (e) if the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. ____ the following information:
>
> (i) Name of party having such interest;
> (ii) Nature of interest or connection, giving dates;
> (iii) Call letters of stations or file number of application, or docket number;
> (iv) Location.

[See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

72. Each applicant, having affirmatively answered that it (or another party to the application) had had an interest in or been connected with "an application which ha[d] been dismissed with prejudice by the Commission" and "an application which ha[d] been denied by the Commission," was then required to state in an attached exhibit: the name of the party having such interest; the nature of interest or connection, giving dates; the call letters of stations or file number of application, or docket number; and its location. [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)] As so required, each applicant attached the necessary exhibit and provided the specifically requested information. Each of the exhibits contained virtually the same description of the Religious Broadcasting and Mt. Baker decisions:

> Although neither an applicant nor the holder of an interest in the application to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. See e.g.

> Religious Broadcasting Network et al., FCC 88R-38 released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcasting Network, et al., FCC 90R-101 released October 31, 1990.
>
> * * *
>
> In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.

[See Norwell Application (Reading Ex. 46, Attachment E at E30-31); Reading Application (Reading Ex. 46, Attachment F at F30); Twentynine Palms Application (Reading Ex. 46, Attachment G at G20-21); Dallas Application (Reading Ex. 46, Attachment H at H24-25)]

i. Mt. Baker

73. Adams takes exception with the Mt. Baker disclosure on the ground that it does not "even suggest[ ], much less describe[ ] forthrightly, the facts and circumstances underlying the *Mt. Baker Proceeding*. . . ." (Adams' Brief, ¶ 434, see also id., ¶¶ 421, 430.) As the Bureau confirms, however, there is no requirement that an applicant provide, in response to Question 7, a description of the facts and circumstances underlying the dismissal or denial of prior applications in which the applicant had an interest. (Bureau's Brief, ¶ 131.)

74. Specifically, the applicable application forms require only that an applicant who has affirmatively answered any of the queries in Questions 6 or 7 state: (i) the name of party having such interest; (ii) the nature of interest or

connection, giving dates; (iii) the call letters of stations or file number of application, or docket number; and (iv) location. To that end, each applicant stated the following information with respect to Mt. Baker: (i) that Micheal Parker was the party to the application who had an interest in or connection with an previous application which had been dismissed / denied by the Commission; (ii) that his interest or connection was that of an officer, director and shareholder; (iii) the call letters and file number – KORC(TV), FCC File No. BMPCT-860701KP; and (iv) the location – Anacortes, Washington. In this regard, the Applications accurately provided all the information that the applicants were required to provide. "In this regard, the Bureau is now of the view that Mr. Parker adequately answered Question 7 insofar as Mt. Baker is concerned." (Bureau's Brief, ¶ 131.)

75. Adams' suggestion that the Mt. Baker description is intentionally deceptive because it does not also, in addition to that information specifically called for, provide a description of "the facts and circumstances underlying the *Mt. Baker Proceeding*," is not supported by clear notice such that an applicant could identify the necessity for such additional information with "ascertainable certainty." See, e.g., See Salzer v. FCC, 778 F.2d 869, 875 (D.C. Cir. 1985) ("The FCC cannot reasonably require applications to be letter perfect when, as here, its instructions for those applications are incomplete, ambiguous or improperly promulgated"); Bamford v. FCC, 535 F.2d 78, 82 (D.C. Cir. 1975), cert. denied, 429 U.S. 895 (1976) (when the Commission requires the submission of information by a license applicant, "elementary fairness requires clarity of standards sufficient to apprise an

applicant of what is expected."); see also Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618, 628 (D.C. Cir. 2000) (where the agency seeks to impose a sanction amounting to the deprivation of property (e.g., disqualification or forfeiture) as the result of a purported violation of agency regulations, the agency's interpretation must have been previously identifiable with ascertainable certainty); General Electric Co. v. EPA, 53 F.3d 1324, 1328-1329 (D.C. Cir. 1995) (same).

76. A complete discussion of the requirements of "clear notice" and "ascertainable certainty" is set forth in Reading's Proposed Findings and Conclusions at paragraphs 161-169, and is incorporated herein by reference.

77. Because the Applications provide all the information required by the applications, Adams' asserted failure to include additional information beyond that called for cannot support a finding of misrepresentation or lack of candor.

ii. Religious Broadcasting.

(A) The description is accurate.

78. In contrast to its opposition to the Mt. Baker disclosure based on the asserted failure to provide a description of that decision, Adams takes exception to the Religious Broadcasting disclosure precisely because it did describe the decision, albeit, in Adams' opinion, inaccurately. (Adams' Brief, ¶¶ 317, 429, 433.) In particular, Adams finds fault with the disclosure's statements that Parker was not "the holder of an interest in the application to the proceeding" and that "for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed [to be the real party in interest]." (Adams' Brief, ¶ 317,

429.) As demonstrated below, the Religious Broadcasting disclosure is accurate and Adams' objections are not well taken.

79. With respect to Adams' objection to the statement that Parker was not "the holder of an interest in the application to the [Religious Broadcasting] proceeding," Adams' claimed inaccuracy results from its perceived inconsistency between the statement and the ALJ's finding in Religious Broadcasting that Parker was the real-party-in-interest. (Adams Brief, ¶ 317, 429.) The principal problem with Adams' position is that it depends on a partial reading of the Religious Broadcasting disclosure. Thus, when read in full, the disclosure clearly and accurately shows that Parker, *although* he was not the holder of an interest in the SBB application,[21] Parker *was found to be* the real-party-in-interest. Contrary to Adams' assertion based on a partial recitation of the disclosure statement, there is no inconsistency between the statement, which does identify that Parker was found to be the real-party-in-interest, and the ALJ's finding.

80. Adams' objection to this statement is also flawed because it depends on reading the statement out of context. Thus, the description was presented in the context of an affirmative acknowledgment that the applicant (or a party to the application) had had an interest in or had been connected with "an application which ha[d] been dismissed with prejudice by the Commission" and "an application which ha[d] been denied by the Commission." [Applications, Question 7]

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[21] Which he was not. [Parker Testimony, ¶ 5, Tr. 1945:7-8, 1967:12-17]

81. Thus, despite Adams' protestations, the disclosure that "*Although* neither an applicant *nor the holder of an interest in the application* to the proceeding, *Micheal Parker's role as a paid independent consultant* to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, *was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead,* for purposes of the comparative analysis of SBB's integration and diversification credit, *Mr. Parker was deemed such*," is accurate.

The statement that the real-party-in-interest ruling was limited to "the comparative analysis of SBB's integration and diversification credit" is also accurate. Thus, while the ALJ found that the record supported disqualification of SBB on the real-party-in-interest issue, he also ruled that "[i]n the event, however, that such a penalty is found to be too harsh on review, the Presiding Judge reaches the additional conclusion that [SBB] is not entitled to any integration credit for its proposal to integrate Ms. Van Osdel." Religious Broadcasting, 2 FCC Rcd 6561, ¶ 60 (ALJ 1997). On SBB's exceptions to the ALJ's initial decision, the Review Board, while recognizing that the ALJ had found SBB to be disqualified, did *not* affirm that disqualification, but affirmed the ALJ's real-party-in-interest ruling only so far as it refused to award integration credit to SBB. See Religious Broadcasting, 3 FCC Rcd 4085, ¶ 16 (stating in relevant part: "[w]e affirm, con brio, the ALJ's refusal to award 'integration' credit to SBB"), ¶ 50 ("Based on the foregoing review of the

exceptions of *all twelve remaining applicants*, . . . we affirm the ALJ's outright rejection of the 'integration' proposal[ ] of SSB (sic) . . . ." (emphasis added)), ¶ 63 (Review Board's ordering clause makes no distinction between SBB's application and the other applications *denied* on comparative grounds; compare the ordering clause in the ALJ's decision which found SBB "not to be qualified" and "dismissed" its application while "denying" the applications of the remaining comparative applicants, Religious Broadcasting, 2 FCC Rcd 6561, ¶ 324-325).

82. As indicated above, the Review Board itself confirmed the limitation of Religious Broadcasting to the comparative analysis of SBB's integration and diversification credit in a footnote to Doylan Forney, wherein the Review Board stated that in Religious Broadcasting, "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit." Doylan Forney, 3 FCC Rcd at 6338 n.1 (Rev. Bd. 1988). This statement was made shortly after the Religious Broadcasting decision.

83. That the Religious Broadcasting decision was limited to the comparative analysis of SBB's integration and diversification credit and did not hold SBB to be disqualified is further confirmed by the fact that the Review Board subsequently approved an $850,000 settlement payment to SBB. Had it found SBB to be disqualified, Commission policy would have precluded such approval. See Dorothy O. Schulze and Deborah Brigham, a General Partnership, 13 FCC Rcd

3259 (1998), aff'd sub nom. SL Communications, Inc. v. FCC, 168 F.3d 1354, 1359 (D.C. Cir. 1999).

84. Thus, the only interpretation of Religious Broadcasting that is consistent with the evidence, the Review Board's affirmation language, its approval of the settlement, and its statement in Doylan Forney, is that SBB was *not* found to be disqualified as a result of the real-party-in-interest issue, but that, although he was not the holder of an interest in the SBB application, Micheal Parker's role as a paid independent consultant to SBB was such that he was deemed to be the real party in interest for purposes of the comparative analysis of SBB's integration and diversification credit; which, of course, is exactly what the disclosure states.

(B) The description arose from the advice of counsel.

85. While the Bureau also incorrectly takes exception to the Religious Broadcasting description, unlike Adams, the Bureau does correctly find that the description arose out of legal advice that Parker had from his counsel, Clark Wadlow, and, therefore, concludes that the evidence does not support a finding of intentional deception. (Bureau's Brief, ¶ 131-133.) Adams, however, disputes Parker's reliance on the advice of counsel and attempts to discredit both Parker's and Mr. Wadlow's testimony that they believed that the Religious Broadcasting description was accurate. (Adams' Brief, ¶¶ 317-318, 324-325, 334-346, 359-419, 423-429, 432-433, 436-454, 517-518, 522-523.) In support of that position, however, Adams (who bears the burden of proof) offers only its own, obviously biased, disbelief, speculation and conjecture.

86. The record establishes that Mr. Wadlow advised Parker, both orally and in writing, that Religious Broadcasting did not present any questions as to Parker's qualifications. [Parker Testimony, ¶ 7-8 (Reading Ex. 46), Tr. 1992:24-1193:7, 1996:5-11, 2024:13-2025:14; Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D); Wadlow Testimony, Tr. 1806:10-24, 1821:24-1823:9, 1824:10-20, 1826:16-21, 1827:20-1828:11, 1829:19-1830:2, 91830:15-21, 1853:19-1856:12] Mr. Wadlow, when asked about his February 18, 1991 letter to Parker (Reading Ex. 46, Attachment D), stated: '[T]he sense that I was trying to convey [in my letter to Parker] is that as ultimately disposed of, there was nothing in the [Religious Broadcasting] case that reflected adversely on Mr. Parker." [Wadlow Testimony, Tr. 1822:13-16] In that regard, Mr. Wadlow's understanding of the legal effect of Religious Broadcasting on Parker's qualifications primarily stemmed from his belief that the Review Board could not have approved the settlement payment to SBB had SBB been found to be disqualified. [Wadlow Testimony, Tr. 1821:24-1823:9, 1829:19-1830:2, 1830:15-21, 1853:19-1856:12] That understanding was further supported for Mr. Wadlow by the specific language of the Review Board's decision affirming the real-party-in-interest ruling only in so far as it denied SBB integration credit [id. at 1824:10-20] and the fact that the Review Board "denied" rather than "dismissed" SBB's application [id. at 1821:24-1823:9, 1824:10-20, 1826:16-21, 1827:20-1828:11]. The record also establishes that Parker approved the Religious Broadcasting description in reliance on Mr. Wadlow's advice. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 2024:13-23]

87. It is not disputed that Mr. Wadlow advised Parker concerning the effect of Religious Broadcasting on Parker's qualifications or that Parker relied on that advice with respect to the Religious Broadcasting description. (See Adams' Brief, ¶¶ 363; Bureau's Brief, ¶¶ 36, 133.) Adams asserts, however, that Parker's reliance was unreasonable because Mr. Wadlow's advice was "patently incorrect" and Parker "knew or should have known" that the advice was wrong. (Adams' Brief, ¶¶ 363 ("the record establishes that the Wadlow Letter was patently incorrect and that Mr. Parker, a person familiar with broadcast applications, knew or should have known that."), 372 ("both Mr. Wadlow and Mr. Parker knew, or should have known, that the Wadlow Letter was factually inaccurate."), 449.)

88. Adams' argument concerning Mr. Wadlow's advice and Parker's reliance is unavailing for two simple reasons. One, Mr. Wadlow's advice concerning the legal effect of Religious Broadcasting is not incorrect, let alone "patently incorrect." Thus, as demonstrated above, the Review Board did *not* find SBB to be disqualified. Two, even if the advice was incorrect (which it was not), Mr. Wadlow believed that the advice was correct -- that the Review Board did *not* find SBB to be disqualified. [Wadlow Testimony, Tr. 1821:24-1823:9, 1824:10-20, 1826:16-21, 1827:20-1828:11, 1829:19-1830:2, 91830:15-21, 1853:19-1856:12]

89. Adams attempts to cast doubt on the veracity of Mr. Wadlow's testimony that he believed that Religious Broadcasting did not present questions as to Parker's qualifications by alluding to a collateral real-party-in-interest situation involving Christine Shaw. (Adams' Brief, ¶¶ 379-400.) After outlining the "Shaw

situation," Adams asserts that, even though the record does not support a finding that either Parker or Mr. Wadlow made any connection between the "Shaw situation" and the Religious Broadcasting advice, such an inference must, nevertheless, be drawn. (Id., 397-399, 451.) To that end, Adams flatly asserts that "[i]t is inconceivable that Parker and Mr. Wadlow did not recognize that the Shaw situation completely undermined any shred of validity that the Wadlow Letter might have claimed." (Id., ¶ 390.)

90. Adams' reliance on the "Shaw situation," however, is baseless. First, nothing involved in that "situation" alters the correctness of Mr. Wadlow's advice concerning the effect of Religious Broadcasting on Parker's qualifications. Second, although Adams deems it "inconceivable," the record simply does not support a finding that either Parker or Mr. Wadlow made any connection between the "Shaw situation" and the Religious Broadcasting advice.

91. Thus, despite Adams' attempts to disparage Mr. Wadlow's veracity, there is simply no reason to conclude that Mr. Wadlow's testimony is anything less than completely truthful -- that he believed that Religious Broadcasting did not present any questions as to Parker's qualifications (and he so advised Parker who had sought that advice for independent business purposes).

92. Adams also attempts to dispute the reasonableness of Parker's reliance on Mr. Wadlow's advice. (Adams' Brief, ¶¶ 363, 372, 449.) Adams' position in this regard is even less sound than its position with respect to Mr. Wadlow's advice. Since, as demonstrated above, Mr. Wadlow's advice was correct, it cannot have been

"unreasonable" for Parker to have relied on it. Nor can it reasonably be concluded that, even though Mr. Wadlow, the attorney, never doubted the accuracy of his interpretation of the legal effect of Religious Broadcasting on Parker's qualifications, Parker, the client, should have known better, realized Mr. Wadlow's advice was incorrect (which it was not), and rejected it. Mr. Parker testified (and Adams does not dispute) that he relied on Mr. Wadlow's advice concerning the legal effect of Religious Broadcasting. Under these circumstances, there is no reason to conclude that Parker's reliance on that advice was unreasonable.

93. Moreover, Adams' assertion that Parker should have rejected Mr. Wadlow's advice concerning the legal implications of Religious Broadcasting is not only unsound but it is contrary to Commission policy promoting such reliance. See Fox Television Stations, Inc., 10 FCC Rcd 8452, ¶ 119 n.68 (1995) (the Commission has tried to avoid "creat[ing] an environment in which licensees are discouraged from seeking and following the advice of legal counsel."); see also Roy M. Speer, 11 FCC Rcd 18,393, ¶ 75 (1996) (good faith reliance on a conclusion of law, even if the conclusion is ultimately found to be incorrect and the reliance misplaced, undercut any inference of intent to deceive).

94. Finally Adams attempts to refute Parker's 1991-1992 understanding of the disclosures by contrasting descriptions of those cases set forth in a letter written in 1998 (the "Gaulke Letter"). (Adams' Brief, ¶¶ 401-419.) The absurdity of Adams' position is patent. Accordingly, Reading simply points out that the Gaulke letter has no bearing on whether the 1991-1992 disclosures were intentionally deceptive

because: (1) it was written years after the disclosures at issue; (2) it was written after the same character claims presented here were raised against Parker by Shurberg Broadcasting of Hartford ("Shurberg") with respect to an assignment application of TIBS for Station WHCT-TV, Hartford, Connecticut, and by Shurberg and Adams with respect to TIBS's assignment application for Station KAIJ, Dallas, Texas;[22] and (3) it was intended to reflect those new allegations in response to concerns raised by Telemundo about those allegations.

95. Despite Adams' unfounded protestations of unreliability, the record establishes that Parker and Mr. Wadlow believed (correctly) that Religious Broadcasting did not raise any questions about Parker's qualifications. Accordingly, it cannot be concluded that the description of Religious Broadcasting, even if incorrect (which it is not), was intentionally deceptive. The Bureau concurs in that conclusion. (Bureau's Brief, ¶ 133 ("Moreover, both Mr. Wadlow and Parker consistently testified that they believed that approval of the San Bernardino settlement could not have occurred unless the Review Board had resolved the real-party-in-interest issue in SBBLP's favor. In light of these circumstances, it is understandable that Parker believed that the Religious Broadcasting Network narrative was accurate.")

[22] Shurberg and Adams were, at all relevant times, represented by Bechtel & Cole.

2. The Dallas Amendment.

96. During the processing of the Dallas Application, Andree Ellis, the Commission staff person reviewing the application, requested that each party to the application, Criswell Center for Biblical Studies and Two If By Sea Broadcasting Corporation ("TIBS"), file an amendment stating whether basic character issues had been sought or added against any of the applications identified in the Dallas Application as having been dismissed or denied. [Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(a, c) (Enforcement Bureau Ex. 2)] There was nothing particularly unusual or significant about these requests and they were simply made as part of Ms. Ellis' usual custom and practice of requesting amendments in all cases where an applicant identifies a prior FCC application that had been dismissed. [Stipulation Concerning the Testimony of Andree Ellis and Kenneth Scheibel, ¶ 1(c) (Enforcement Bureau Ex. 2)] The purpose of this request appears to have been to clarify the language in Question 7(d) of the application, whether the applicant had any "applications in any Commission proceedings which left unresolved character issues against the applicant."

97. On October 22, 1992, the requested amendment to the Dallas Application (the "Dallas Amendment") was filed, stating:

> Two If By Sea Broadcasting Corporation ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and applicants had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed.

[Parker Testimony, ¶ 14 (Reading Ex. 46); Dallas Amendment (Reading Ex. 46, Attachment J at J3)]

98. Both the Bureau and Adams contend that this representation lacks candor. Their contention, however, derives from an out of context interpretation of the statement, depends on an incomplete and incorrect recitation of the record evidence, and wholly ignores the facts that the amendment was prepared by independent counsel, that Two If By Sea ("TIBS") reasonably relied on counsel's skill and judgment to assure that the statement was complete and accurate, that TIBS believed that the Amendment was complete and accurate when it was filed, and that, taken in context, the Dallas Application as amended is, in fact, complete and accurate.

a. The Dallas Amendment is factually and contextually complete and accurate.

99. The Bureau and Adams inaccurately interpret the Dallas Amendment, without giving meaning to its temporal element, as a "denial" that any character issues had been added or requested in any of the applications that TIBS listed in the Dallas Application in which its officers, directors and applicants had held interests and which were dismissed at the request of the applicant. (Adams' Brief, ¶¶ 319-320; Bureau's Brief, ¶¶ 134-135.) They then conclude that such a denial was false since the Amendment failed to identify that a character issue had been added in Religious Broadcasting. (Adams' Brief, ¶¶ 319-320; Bureau's Brief, ¶¶ 134-135.) This assertion, however, wholly overlooks the fact that the Dallas Amendment was intended and understood to *add* to the information set forth in the Dallas

Application. [Parker Testimony, Tr. 1986:1-12, 2064:11-2065:11] In that context, it cannot simply be ignored, as Adams and the Bureau do, that the Dallas Application implicitly discloses that a real-party-in-interest issue *had* been added in Religious Broadcasting *and* that Parker had been deemed to be the real-party-in-interest for purposes of the comparative analysis of SBB's integration and diversification credit. [Dallas Application (Reading Ex. 46, Attachment H at H24)] Thus, having disclosed in the application itself that a real-party-in-interest issue had been resolved adversely on comparative grounds but favorably on basic qualifications, in Religious Broadcasting, the Dallas Amendment simply and correctly confirmed that, *at the time that the SBB application was dismissed*, no character issues had been added or requested against SBB -- rather, the real-party-in-interest issue had been resolved in the manner stated in the Dallas Application as originally filed.

100. Nor is the Dallas Amendment factually inaccurate. The Dallas Amendment, in accordance with the Application's Question 7, dealt with the status of Parker's applications at the time those applications were dismissed or denied. Clearly, a real-party-in-interest issue had been added against SBB, as was disclosed in the Dallas Application as originally filed. However, at the time the application was dismissed, the real-party-in-interest issue had been resolved favorably on qualification grounds and unfavorably on comparative grounds.

101. Thus, the Dallas Amendment correctly described the status of the applications at the time those applications were dismissed or denied. At the time the SBB application was dismissed pursuant to a settlement, the real-party-in-

interest issue had been resolved in the manner stated in the Dallas Application as originally filed. Clearly, given the disclosure of Religious Broadcasting in the original Dallas Application, there was no need to amend the Dallas Application other than to affirm that, as of the time each of Parker's applications were dismissed, there was no pending or requested character issue. The Dallas Amendment correctly stated that was the case.

b. The evidence does not support a conclusion that the Dallas Amendment was intentionally deceptive.

102. Any claim that the Dallas Amendment was intentionally deceptive is belied by the facts surrounding its creation. Thus, both Eric Kravetz and Parker confirmed that it was Mr. Kravetz who dealt with the Commission to ascertain the details of its concerns about the Dallas Application. [Parker Testimony, 1976:23-1978:5; Kravetz Testimony, Tr. 2353:7-2354:4, 2354:17-2355:9, 2356:14-23, 2371:15-2372:8] Thereafter, Mr. Kravetz was retained by TIBS to prepare an amendment that would satisfy the Commission's concerns. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1977:16-24, 1979:19-22; Dallas Amendment (Reading Ex. 46, Attachment J at J1); Kravetz Testimony, Tr. 2361:19-23] In that regard, TIBS, either through Parker or Ms. Hendrickson, accurately advised Mr. Kravetz, based upon the prior advice from the Sidley Attorneys, that there were no unresolved character issues pending when the applications were dismissed. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1983:1-4; Kravetz Testimony, Tr. 2354:17-2355:16, 2356:14-23, 2371:15-2372:8] Mr. Kravetz then prepared the Dallas

Amendment based upon that information that he had from TIBS, "that no character issues had been added or requested against those applicants *when those applications were dismissed.*" [Parker Testimony, Tr. 1982:24-45; Kravetz Testimony, Tr. 2356:12-23; Dallas Amendment (Reading Ex. 46, Attachment J at J3) (emphasis added)] The Amendment, as so drafted by Mr. Kravetz, was forwarded to Parker who signed it and returned it to Mr. Kravetz for filing. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. 1991:11-15; Kravetz Testimony, Tr. 2354:17-2356:5; Dallas Amendment (Reading Ex. 46, Attachment J at J3)]

103. These undisputed facts demonstrate that, as between TIBS and Mr. Kravetz, it was Mr. Kravetz who dealt with the Commission and who understood the Commission's concerns that prompted the request for the Amendment. In discussing those concerns with TIBS, he was advised that there were no unresolved character issues pending when the applications were dismissed, which was absolutely true. That information, which was itself based on prior legal advice from the Sidley Attorneys, was apparently sufficient in Mr. Kravetz's view to satisfy the Commission's concerns and TIBS relied on his understanding of those concerns to make the that determination. Based on that information, Mr. Kravetz then drafted the Amendment, which Parker signed in the good faith belief that it accurately responded to the Commission's inquiry.

104. To the extent that there is a dispute that the Dallas Amendment does not reflect the information TIBS provided to Mr. Kravetz (Adams' Brief, ¶¶ 319, 348; Bureau's Brief, ¶ 40), that dispute is without factual support. Thus, there is no

question that Mr. Kravetz drafted the Amendment based on the information he had from TIBS -- certainly it cannot reasonably be asserted that he intentionally altered the content of that information to mislead TIBS or the Commission. Mr. Parker, thereafter, reviewed the Amendment as drafted and, although perhaps inartfully worded, he had no reason to believe that it did not accurately reflect the content of the information that had been conveyed to Mr. Kravetz. Certainly Parker had no reason to suspect that Mr. Kravetz would draft a statement that did not accurately reflect the information that he had been provided -- that there were no unresolved character issues pending when the applications were dismissed. Thus, to the extent that the exact that Adams and the Bureau take exception to specific language of the Dallas Amendment, there is simply no evidence that such language was the result of intentional deception as opposed to simple miscommunication and inartful draftsmanship.

105. To the extent that there is a claim that Mr. Kravetz was unaware of the Religious Broadcasting decision at the time that he drafted the Dallas Amendment and that he would not have drafted the Amendment as he did had he been aware of the ruling (Adams' Brief, ¶ 349; Bureau's Brief, ¶ 39), such lack of knowledge and speculation about what he would or would not have done, does not imply an intent to deceive by TIBS. Specifically, Mr. Kravetz was retained, based on his experience and expertise as a communications attorney, for the purpose of responding to the Commission's concerns about the Dallas Application. (Even Adams has never been able to suggest a reason for TIBS to have retained Mr.

Kravetz to work on the amendment if TIBS' intention was to mislead the Commission.) TIBS relied on his professional skill and judgment and, as Parker testified, he believed that Mr. Kravetz was aware of the Religious Broadcasting decision at the time that he prepared the Amendment. [Parker Testimony, Tr. 1989:11-1990:21]

106. Certainly such a belief is reasonable since Mr. Kravetz had prepared the Seller's part of the Dallas Application and had assembled for filing the *entire* Application, including TIBS' portion which contained the Religious Broadcasting reference (which, as previously noted, identified that a real-party-in-interest issue had been added). Moreover, since Mr. Kravetz was specifically retained to prepare the Dallas Amendment, which responded to Commission concerns about applications listed by TIBS in the Dallas Application, it is certainly reasonable to have expected that, in the performance of that professional duty, he would have *at least* reviewed that part of the Dallas Application which referred to the applications at issue. Had he done so, he would have read the Religious Broadcasting description, realized that a real-party-in-interest issue had been added, and, supposedly, drafted the Dallas Amendment differently. Mr. Kravetz's failure to even minimally familiarize himself with the relevant parts of the Dallas Application, however, cannot be attributed to TIBS nor does such failure make it any less reasonable for TIBS to have assumed that Mr. Kravetz had reviewed the Application and was, therefore, aware of the Religious Broadcasting decision.

107. Mr. Kravetz was retained by TIBS as communications counsel to exercise his professional skill and judgment in the preparation of the Dallas Amendment. To that end, Mr. Kravetz ascertained the Commission's concerns and relayed them to TIBS. In discussions with TIBS about the Commission's concerns, Mr. Kravetz obtained all the information he believed necessary to respond to those concerns. The information he obtained from TIBS was accurate and based on prior legal advice from the Sidley Attorneys. Mr. Kravetz, thereafter, drafted the Dallas Amendment to reflect the information he had from TIBS. Mr. Parker signed the Dallas Amendment as drafted with the reasonable understanding that it reflected the information Mr. Kravetz had been provided. Accordingly, even if it is determined that the Dallas Amendment is not completely accurate (which, Reading maintains, it is), both Parker and Mr. Kravetz believed that it was and that it fully responded to the Commission's concerns. The facts, therefore, do not support a conclusion of knowing falsity or intentional deception concerning the Dallas Amendment.

c. Parker's testimony is consistent.

108. Adams and the Bureau suggest that Parker testified inconsistently about the scope of the Dallas Amendment. Specifically, they claim that he first testified that the Dallas Amendment was not intended to include the Religious Broadcasting decision and then later that it did include that decision. (Adams' Brief, ¶¶ 321-322, 350; Bureau's Brief, ¶¶ 40.) The record does not support this